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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Bryan L. Reidenbach

Serial No: 09/325,296

Examiner: Nathan J. Newhouse

Filed: June 3, 1999

Art Unit: 3727

For: TAMPER-RESISTANT BOTTLE CLOSURE

Assistant Commissioner for Patents
Washington, D.C. 20231

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REQUEST FOR RECONSIDERATION

Introduction and Request for Withdrawal of Final Rejection

In response to the office action dated march 27, 2001, reconsideration is respectfully requested. Since there is a new grounds for rejection under the Barriac reference, withdrawal of the Final Rejection is requested.

Rejection Under 35 USC § 112

In response to the rejection under 35 USC § 112, first paragraph, Applicant contends that his recitation, for example, of one breakaway skirt as in claim 17 or one outer skirt as in claims 1 and 6, or one upper and lower skirt as in claim 14 is supported by the specification. If there are a plurality of particular elements in a specific embodiment of an invention, such a species would be included in a generic claim which recites a particular element. The Applicant contends that the Examiner is incorrectly applying the concept of undue breadth which is applicable in inherently unpredictable arts such as chemical and biological arts as in, for example, set forth in In re Borkowski, 422 F.2d 904, 164, USPQ 642 (CCPA 1970) and In re Wright, 999 F.2d 1557, 27 USPQ 2d 1510 (Fed. Cir. 1993). The application of the concept of undue breadth is clearly inapplicable to a claim's mechanical invention.

Rejections Under 35 U.S.C. § 102

Claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,801,030 to Barnac (hereinafter "Barnac"). This rejection is traversed as follows.

Barnac discloses a tamper-indicating closure and package comprising a one-piece molded closure of plastic which threads onto a container such that when the closure is unthreaded, a tamper-indicating band becomes separated from the lower end of the closure skirt. The tamper-indicating band is joined to the closure along a weakened frangible line. A flexible annular wall is formed within the band and extends inwardly and upwardly when the closure is applied to container finish. The band further includes a plurality of circumferentially spaced flexible walls extending circumferentially and fastened at their circumferential ends to the inner surface of the annular wall and having portions intermediate their ends which extend radially inwardly. When the closure is applied to the container, the intermediate portions of the circumferentially extending walls are flexed radially outwardly intermediate their ends over the annular bead on the container and then flex radially inwardly beneath the annular bead while the annular wall is interposed between the skirt of the closure and the annular bead on the container. When the closure is unthreaded, the upper edges of the circumferentially spaced circumferential walls engage the underside of the bead and cause the band to sever along the weakened line.

Barnac does not teach or suggest the securing strap and intermediate link functions which are inherent to the structure recited in claim 1.

Claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by EP 541,466 (hereinafter, the "EP reference"). This rejection is traversed as follows.

The EP reference discloses a cap which has an integrally threaded belt (15). The free end of the cap is connected by breakable bars (7), to an anti-tamper ring (3). The anti-tamper ring is extended at its free end by a plurality of jointed tabs (10) which are folded against the lower surface of the ring in the used position of the cap, and each has a surface which can bear against the backing ring (9) on the neck of the receptacle. The anti-tamper ring (3) also includes holes (19) each of which receives a tab (17). These tabs form a rim

(16) intended to bear against the edge (20) of the hole (19) situated on the side opposite its end for attachment to the cap.

The EP reference does not teach or suggest the securing strap and intermediate link functions which are inherent to the structure recited in claim 1.

In establishing a prima facie case of anticipation under 35 USC § 102, the Examiner must find every element of the applicant's claim in a single reference; other references may be used only to interpret the allegedly anticipated reference. Studiengesellschaft Kohle, m.b.H. v. Dart Industries, Inc., 726 F. 2d. 724, 220 USPQ 841 (Fed. Cir. 1984). This idea was similarly upheld in Scripps Clinic & Research Foundation v. Genentech, Inc., 927 F. 2d. 1565, 18 USPQ 2d. 1001, 18 USPQ 2d. 1896 (Fed. Cir. 1991), wherein the Court held "that invalidity for anticipation requires that all the elements and limitations of the claims be found in a single prior art reference."

In establishing a prima facie case of obviousness under 35 U.S.C. 103, it is incumbent upon the Examiner to provide a reason why one having ordinary skill in the art would have been led to modify a prior art reference to arrive at the claimed invention. The requisite motivation must stem from some teaching, suggestion or interest in the prior art as a whole or from knowledge generally available to one having ordinary skill in the art. See Uniroyal, Inc. v. Rudkin Riley, Corp., 837 Fed. 2d. 1044, 5 USPQ 2d. 1434 (Fed. Cir. 1988); Ashland Oil, Inc. v. Delta Resin And Refractories, Inc., 776 F. 2d. 281, 227 USPQ 657 (Fed. Cir. 1985).

Where claimed subject matter has been rejected as obvious in view of a prior art reference, a proper analysis under § 103 requires consideration of two factors; (1) whether the prior art would have suggested to those of ordinary skill in the art that they should make the claimed composite or device or carry out the claimed process; and (2) whether the prior art would also have revealed that in so making or carrying out the invention those of ordinary skill would have a reasonable expectation of success. See In re Dow Chemical Company 837 Fed. 2d. 469, 473, 5 USPQ 2d. 1529, 1531 (Fed. Cir. 1988). both the suggestion and the reasonable expectation of success must be found in the prior art, not in the applicant's disclosure.

It is applicant's position that such suggestion and/or reasonable expectation of

success could not be found in the cited references.

The Patent and Trademark Office Board of Patent Appeal and Interferences stated the following in Ex parte Clapp, 227 USPQ 972 (1985), at page 973:

“Presuming arguendo that references show the elements or concepts urged by the Examiner, the Examiner has presented no line of reasoning, and we know of none, as to why the artist when viewing only the collective teachings of the references would have found it obvious to selectively pick and choose various elements and/or concepts from the several references relied on to arrive at the claimed invention. In the instant application, the Examiner has done little more than cite references to show that one or more elements or some combinations thereof, when each is viewed in a vacuum, is known. The claimed invention, however, is clearly directed to the combination of elements. That is to say, applicant does not claim that he has invented one or more new elements but has presented claims to a new combination of elements. To support the conclusion of the claimed combination is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed combination where the Examiner must present a convincing line of reasoning as to why the artist would have found the claimed invention to have been obvious in light of the teaching of the references.”

With the above directives, consideration must be given as to whether the reference in the manner set forth in the Office Action is proper to render the applicant's invention obvious in view thereof.

As set forth hereinabove, it is applicant's contention that the references do not suggest, nor does it teach the combination as set forth in now amended Claim 1, as is evident from the plurality of differences between applicant's invention and the cited art set forth hereinabove. Again, the reference must teach the alleged combination to render applicant's invention obvious under 35 U.S.C. 103. The CAFC in the recent case of In re Fine, 5 USPQ 2d. 1596, 1988 stated beginning at page 1599 that:

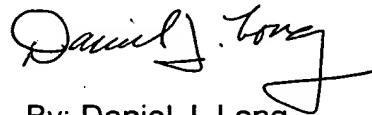
“Obviousness is tested by “what the combined teaching of the references would have suggested to those of ordinary skill in the art.” In re Keller, 642 F. 2d. 413, 425, 208 USPQ 71, 881 (CCPA 1981). “But it cannot be established by combining the teachings of the prior art to produce the

claimed invention, absent some teaching or suggestion supporting the combination." ACS Hospital Sys., 732 F. 2d. at 1577, 221 USPQ at 933. "Teachings of references can be combined only if there is some suggestion or incentive to do so." Id. Here, the prior art contains none.

While the present invention has been described in connection with the preferred embodiments of the various figures, it is to be understood that other similar embodiments may be used or modifications and additions may be made to the described embodiment for performing the same function of the present invention without deviating therefrom. Therefore, the present invention should not be limited to any single embodiment, but rather construed in breadth and scope in accordance with the recitation of the appended claims.

Respectfully submitted at Canton, Ohio this 27th day of June, 2001.


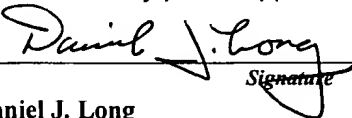
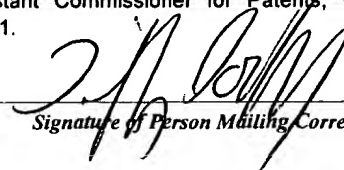
SAND & SEBOLT

A handwritten signature in black ink, appearing to read "Daniel J. Long". The signature is stylized with a large, sweeping "L" at the end.

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145/3727

AMENDMENT TRANSMITTAL LETTER (Small Entity)			Docket No. 1493-M		
Applicant(s): Bryan L. Reidenbach					
Serial No. 09/325,296	Filing Date 6/3/99	Examiner Nathan J. Newhouse	Group Art Unit 3727		
Invention: TAMPER-RESISTANT BOTTLE CLOSURE					
 <u>TO THE ASSISTANT COMMISSIONER FOR PATENTS:</u>					
Transmitted herewith is an amendment in the above-identified application.					
<input checked="" type="checkbox"/> Small Entity status of this application has been established under 37 CFR 1.27 by a verified statement previously submitted.					
<input type="checkbox"/> A verified statement to establish Small Entity status under 37 FR 1.27 is enclosed.					
The fee has been calculated and is transmitted as shown below.					
CLAIMS AS AMENDED					
	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST # PREV. PAID FOR	NUMBER EXTRA CLAIMS PRESENT	RATE	ADDITIONAL FEE
TOTAL CLAIMS	14 -	21 =	0 x	\$9.00	\$0.00
INDEP. CLAIMS	4 -	4 =	0 x	\$40.00	\$0.00
Multiple Dependent Claims (check if applicable) <input type="checkbox"/>					\$0.00
TOTAL ADDITIONAL FEE FOR THIS AMENDMENT					\$0.00
<div style="float:right; text-align:right; border: 1px solid black; padding: 5px; transform: rotate(90deg);">RECEIVED JUL - 5 2001 TC 3700 MAIL ROOM</div> <div><input checked="" type="checkbox"/> No additional fee is required for amendment.</div> <div><input type="checkbox"/> Please charge Deposit Account No. _____ in the amount of _____ A duplicate copy of this sheet is enclosed.</div> <div><input type="checkbox"/> A check in the amount of _____ to cover the filing fee is enclosed.</div> <div><input type="checkbox"/> The Commissioner is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. _____ A duplicate copy of this sheet is enclosed.<div style="margin-left: 20px;"><input type="checkbox"/> Any additional filing fees required under 37 C.F.R. 1.16.</div><div style="margin-left: 20px;"><input type="checkbox"/> Any patent application processing fees under 37 CFR 1.17.</div></div> <div style="margin-top: 20px;"><div style="display: flex; justify-content: space-between;"><div> _____ Daniel J. Long Sand & Sebolt Aston Park Professional Centre, Suite 194 4801 Dressler Rd. NW Canton, OH 44718 330-492-1925</div><div>Dated: 6/27/01</div></div></div>					
<div style="display: flex; justify-content: space-between;"><div>CC:</div><div style="border: 1px solid black; padding: 5px; width: 300px;"><div>I certify that this document and fee is being deposited on 6/27/01 with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.</div><div style="text-align: center;"> _____ Signature of Person Mailing Correspondence Tiffany M. Godfrey Typed or Printed Name of Person Mailing Correspondence</div></div></div>					